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*Attorneys for Defendant*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MARTIN ROJAS, on behalf of himself and  
others similarly situated,

Case No. 13 CV 5272

Plaintiff,

-against-

**ANSWER AND  
AFFIRMATIVE  
DEFENSES**

TRIBECA SUSHI INC. d/b/a ASHIYA III, NEW  
ASHIYA JAPANESE CUISINE NY INC. d/b/a  
ASHIYA II, ASHIYA SUSHI 5 INC. d/b/a ASHIYA V,  
QIANG CHEN, SONG CHEN, and YU LING CHEN,

Defendants.

-----X  
DEFENDANTS, collectively, by undersigned counsels, Heng Wang & Associates, P.C.,

for their answer and affirmative defenses set forth the following:

**INTRODUCTION**

1. Deny the allegations set forth in paragraph “1” of the Complaint except refers to the laws, rules and statutes referenced therein for the content thereof.
2. Deny the allegations set forth in paragraph “2” of the Complaint except refers to the laws, rules and statutes referenced therein for the content thereof.

**JURISDICTION AND VENUE**

3. All of the allegations in paragraph “3” of the Complaint constitute legal conclusions to which Defendants shall defer to the Court for decision.

4. All of the allegations in paragraph “4” of the Complaint constitute legal conclusions to which Defendants shall defer to the Court for decision.

### **PARTIES**

5. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation contained in paragraph “5” of the Complaint.
6. Admit paragraph “6” of the Complaint.
7. Admit paragraph “7” of the Complaint.
8. Admit paragraph “8” of the Complaint.
9. Deny the allegations set forth in paragraph “9” of the Complaint.
10. Deny the allegations set forth in paragraph “10” of the Complaint.
11. Deny the allegations set forth in paragraph “11” of the Complaint.
12. Deny the allegations set forth in paragraph “12” of the Complaint.
13. Deny the allegations set forth in paragraph “13” of the Complaint.
14. Deny the allegations set forth in paragraph “14” of the Complaint.
15. Deny the allegations set forth in paragraph “15” of the Complaint.
16. Deny the allegations set forth in paragraph “16” of the Complaint.
17. Deny the allegations set forth in paragraph “17” of the Complaint.
18. Deny the allegations set forth in paragraph “18” of the Complaint.
19. Deny the allegations set forth in paragraph “19” of the Complaint.
20. Deny the allegations set forth in paragraph “20” of the Complaint.
21. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Complaint.

**STATEMENT OF FACTS**

22. Deny the allegations set forth in paragraph “22” of the Complaint.
23. Deny the allegations set forth in paragraph “23” of the Complaint.
24. Deny the allegations set forth in paragraph “24” of the Complaint.
25. Deny the allegations set forth in paragraph “25” of the Complaint.
26. Deny the allegations set forth in paragraph “26” of the Complaint.
27. Deny the allegations set forth in paragraph “27” of the Complaint.
28. Deny the allegations set forth in paragraph “28” of the Complaint.
29. Deny the allegations set forth in paragraph “29” of the Complaint.
30. Deny the allegations set forth in paragraph “30” of the Complaint.
31. Deny the allegations set forth in paragraph “31” of the Complaint.
32. Deny the allegations set forth in paragraph “32” of the Complaint.
33. Deny the allegations set forth in paragraph “33” of the Complaint.
34. Deny the allegations set forth in paragraph “34” of the Complaint.
35. Deny the allegations set forth in paragraph “35” of the Complaint.
36. Deny the allegations set forth in paragraph “36” of the Complaint.
37. Deny the allegations set forth in paragraph “37” of the Complaint.
38. Deny the allegations set forth in paragraph “38” of the Complaint.
39. Deny the allegations set forth in paragraph “39” of the Complaint.
40. Deny the allegations set forth in paragraph “40” of the Complaint.
41. Deny the allegations set forth in paragraph “41” of the Complaint.
42. Deny the allegations set forth in paragraph “42” of the Complaint.

**COLLECTIVE ACTION ALLEGATIONS**

43. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the Complaint as to why Plaintiff brings this action and deny the remaining allegations.
44. Deny the allegations set forth in paragraph “44” of the Complaint.
45. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “45” of the Complaint.
46. Deny the allegations set forth in paragraph “46” of the Complaint.
47. Deny the allegations set forth in paragraph “47” of the Complaint.
48. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the Complaint as Plaintiff makes reference to other members but fails to identify any, otherwise deny the allegations set forth in.
49. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “49” of the Complaint.
50. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation as set forth in paragraph “50” of the Complaint that “Plaintiff and others similarly situated have been substantially damaged” and deny that any damage suffered was caused by Defendants’ wrongful conduct

**CLASS ACTION ALLEGATIONS**

51. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “51” of the Complaint.

52. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation as set forth in paragraph “52” of the Complaint as to why Plaintiff brings this action and deny the remainder of the allegations.

53. Deny the allegations set forth in paragraph “53” of the Complaint.

54. Deny the allegations set forth in paragraph “54” of the Complaint.

55. Deny the allegations set forth in paragraph “55” of the Complaint.

56. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “56” of the Complaint.

57. Defendants lack knowledge and information sufficient to form a belief as to the truth of the first sentence. As to the remaining sentence, it does not express a statement as to which a response is required, however, to the degree a response is required, Defendants deny it.

58. This paragraph does not express a statement as to which a response is required, however, to the degree a response is required, Defendants deny it.

59. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the Complaint as Plaintiff makes reference to other members but fails to identify any, otherwise deny the allegations.

60. Deny the allegations set forth in paragraph “60” of the Complaint.

**STATEMENT OF CLAIM**

**COUNT I**  
**[Violation of the Fair Labor Standards Act]**

61. Defendants repeat their responses to paragraph “1” though “60” of the Complaint.

62. Deny the allegations set forth in paragraph “62” of the Complaint.

63. Deny the allegations set forth in paragraph “63” of the Complaint.
64. Deny the allegations set forth in paragraph “64” of the Complaint.
65. Deny the allegations set forth in paragraph “65” of the Complaint.
66. Deny the allegations set forth in paragraph “66” of the Complaint.
67. Deny the allegations set forth in paragraph “67” of the Complaint.
68. Deny the allegations set forth in paragraph “68” of the Complaint.
69. Deny the allegations set forth in paragraph “69” of the Complaint.
70. Deny the allegations set forth in paragraph “70” of the Complaint.
71. Deny the allegations set forth in paragraph “71” of the Complaint.
72. Deny the allegations set forth in paragraph “72” of the Complaint.
73. Deny the allegations set forth in paragraph “73” of the Complaint.
74. Deny the allegations set forth in paragraph “74” of the Complaint.
75. Deny the allegations set forth in paragraph “75” of the Complaint.

**COUNT II**  
**[Violation of the New York Labor Law]**

76. Defendants repeat their responses to paragraph “1” though “75” of the Complaint.
77. Deny the allegations set forth in paragraph “77” of the Complaint.
78. Deny the allegations set forth in paragraph “78” of the Complaint.
79. Deny the allegations set forth in paragraph “79” of the Complaint.
80. Deny the allegations set forth in paragraph “80” of the Complaint.
81. Deny the allegations set forth in paragraph “81” of the Complaint.
82. Deny the allegations set forth in paragraph “82” of the Complaint.
83. Deny the allegations set forth in paragraph “83” of the Complaint.

84. Deny the allegations set forth in paragraph “84” of the Complaint.
85. Deny the allegations set forth in paragraph “85” of the Complaint.
86. Deny the allegations set forth in paragraph “86” of the Complaint.
87. Deny the allegations set forth in paragraph “87” of the Complaint.
88. Deny the allegations set forth in paragraph “88” of the Complaint.

**AFFIRMATIVE DEFENSES**

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

89. The Complaint fails to state a claim against Defendants.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

90. Plaintiff’s claims are barred by the doctrine of laches.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

91. Plaintiff’s claims are barred by all applicable state and federal statutes of limitations.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

92. Any alleged acts or omissions of Defendants giving rise to Plaintiff’s claims are the result of innocent mistake despite reasonable procedures implemented by Defendants.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

93. If Plaintiff suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the breach, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiff, and not by Defendants.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

94. If Plaintiff suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the breach, conduct, acts,

omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of others, and not by Defendants.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

95. Plaintiff would be unjustly enriched if allowed to recover on this Complaint.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

96. Plaintiff's own negligence proximately caused and contributed to the resulting damages claimed in the Complaint.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

97. The damages complained of were the result of the intervening actions of others and were not proximately caused by the actions or omissions of Defendants.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

98. The Complaint fails to show that any alleged acts or omissions of Defendants caused the damages claimed by Plaintiff.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

99. Plaintiff has failed, in whole or in part, to mitigate his alleged damages.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

100. The allegedly wrongful conduct of Defendants was not malicious.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

101. Plaintiff did not incur any damage or loss as a result of any act or conduct by Defendants.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

102. Any damage or loss Plaintiff did incur as a result of any act or conduct by Defendants would be speculative at best.

**AS AND FOR AN FIFTEENTH AFFIRMATIVE DEFENSE**

103. Plaintiff's claims are barred by the doctrine of Accord & Satisfaction.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

104. Plaintiff's claims are barred by the doctrine of unclean hands.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

105. Plaintiff's claims are barred by the doctrine of waiver.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

106. Plaintiff's claims are barred by the doctrine of estoppel.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

107. Defendants expressly reserve any defenses that it may have available under any applicable laws of other jurisdictions, in accordance with federal choice of law rules.

**WHEREFORE**, Defendants request that this Court dismiss this action and grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: New York, New York  
August 15, 2013

**HENG WANG & ASSOCIATES, P.C.**

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